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REPORTS

NOTES OF THE WEEK

Definition of Unlawful

A pamphlet by a barrister, Mr. Quentin Edwards, published by the Church Information Office, Church House, Westminster for the price of 1*s.* 6*d.*, will stir up a good deal of argument for the manner in which it ventures to re-emphasize some of the arguments of the Wolfenden Report. Mr. Edwards takes as his starting point that part of the report whose kernel is to be found in these words: "there must remain a realm of private morality and immorality which is . . . not the law's business." Mr. Edwards thinks that this line of reason has not received sufficient attention and he considers that it affords a useful starting point for a possible redefinition of the law relating to homosexuality. He emphasizes that not all acts regarded as immoral are held to be crimes, and he considers that it would be a workable reform of the law for a brief Act of Parliament to be passed stating that not all homosexual acts are unlawful and that only some of them—to be specified—need classing as criminal offences. He considers that a line should be drawn in this classification between acts between consenting adults and other homosexual conduct—for instance acts affecting minors.

We do not propose, in this note, to indulge in controversial argument: it is sufficient to draw attention to the pamphlet and leave the field open for the disputation which it is bound to arouse.

Constitution of Juvenile Courts

In arranging the rota for justices for juvenile courts regard has to be had to the requirements that there shall be present, in order to constitute a juvenile court at least one man and at least one woman. However, it must happen occasionally that a justice who has undertaken to sit is unable to attend and no other being immediately available, the court may have to consist of two men or two women, unless in all the circumstances an adjournment can take place without inconvenience to the public.

In the case of *In Re S An Infant, The Times*, November 18, and J.P. Supp. p. 57, an appeal under the Adoption Act, 1958, one point that arose was this question of the proper constitution of the juvenile court. It was admitted that no woman had sat at the hearing of the application. Roxburgh, J., referred to the Juvenile Court (Constitution) Rules, 1954, and to the provision that if at any sitting no man or no woman was available owing to circumstances unforeseen when the justices to sit where chosen, and if the other members of the panel present thought it inexpedient in the interests of justice for there to be an adjournment, the court might be constituted without a man or without a woman, and added that merely to give a woman justice notice to attend could not be ensuring that the court would be properly constituted within the meaning of the rules. Before deciding to sit without a woman, the justices should be satisfied that the absence of the woman justice was owing to circumstances unforeseen when the justices were chosen. There was no evidence in this case as to the circumstances or whether they were unforeseen therefore on that ground the proceedings were null and void. The appeal was allowed and a new trial ordered.

Whether the panel of justices arranges the sittings of individual justices by holding a meeting and drawing up a rota, or delegates to the clerk the duty of making the arrangements by consulting the various justices, it is evidently essential that the arrangement should be definite and that no departure from the general rule as to the constitution of a juvenile court can be justified unless it can be shown that it was due to unforeseen circumstances.

The Clerk's Notes

A further matter upon which the learned Judge commented was the absence of a copy of notes taken by the clerk to the justices. It appeared that they had asked questions, and it was essential that there should be a note made of the questions and answers in order that an appellate court should have before it the whole of the material upon which the justices acted. It was true that there was no statutory

requirement that a note should be taken in this class of case or upon the hearing of a complaint before justices, but it was traditional that in appeals under the Guardianship of Infants Acts a copy of notes of evidence for the justices was supplied to the court. The alternative would be an affidavit from the justices' clerk. In his judgment, said the learned Judge, it would be disastrous if a practice were introduced by a justices' clerk by which he did not have to make any note of the evidence but could make an affidavit as to what the evidence was.

It has long been established that in matrimonial cases where there is an appeal from a magistrates' court copies of the clerk's notes of the evidence and of the justices' reasons for their decision are to be supplied to the High Court (*see* Matrimonial Causes Rules, 1957, r. 73 (3)). Judges have sometimes commented severely on any failure to supply these documents, and the need for taking an adequate note is obvious. The same procedure applies to cases under the Guardianship of Infants Acts. Indeed, in many, probably most, magistrates' courts it is the practice to take a note of the evidence given in all summary cases, and it seems clear from observations of judges from time to time, that this is considered to be proper.

Report of Guardian ad litem

The question of the confidential nature of the report of the guardian *ad litem* was also dealt with, the learned Judge holding that the justices were right in refusing to forward to the applicants a copy of the report. The parties were not entitled to know the contents beyond what the justices saw fit to disclose. It was further laid down that such reports should be forwarded to the Judge's clerk.

In many cases, we suppose, the report is entirely favourable, and the court may allow the report to be read aloud in the presence of the applicants, but in others it may be adverse in some respects, and the court may wish to put questions based on statements in the report, thus giving the party concerned an opportunity of meeting allegations. That is not by any means the same as reading aloud the very words of the report, which, as Roxburgh, J., pointed out, is described in the Rules as confidential. There is here some analogy with the use of the written reports of probation officers in juvenile court proceedings.

This case was the first appeal under the Adoption Act, 1958, and the learned Judge observed that it would be unfair to criticize the justices, who were dealing with a novel situation.

He Asked to be Disqualified but was Not

We are somewhat puzzled by a report in *The Yorkshire Post* of November 3, about a motorist who pleaded guilty to driving a van without a licence (we assume this to be a driving licence) and to failing to produce his insurance certificate. The report states that, through his solicitor, he appealed to the magistrates to disqualify him from driving because he was having blackouts and did not want to be tempted to drive as he might be if he were not disqualified. We are not concerned with this somewhat strange reasoning, but we do note that the report concludes "the magistrates fined him a total of £8 *and explained they had no power to order a ban.*"

If the first offence is what it appears from the report to be, *i.e.*, one against s. 4 (1) of the Road Traffic Act, 1930, our readers will remember that the very first offence listed on the fourth schedule to the Road Traffic Act, 1956 (which sets out the offences in respect of which disqualification or endorsement may be ordered) is "Any offence against s. 4 (1) of the Act of 1930 (driving . . . without a licence) . . ." We can understand a court feeling that in the vast majority of such cases disqualification is not appropriate but we do not understand why it should be said that "they had no power to order a ban."

Mental Deficiency as a Bar to Driving

At 123 J.P.N. 553 we wrote a Note of the Week about appeals against the refusal to issue driving licences. Another case of such an appeal has come to our notice in a report published in the *Evening Argus*, Brighton, of November 12. It concerned a man who had driven for 12 years without an accident but had thereafter lost his licence when he went into an institution as a mental defective. He spent some time in hospital and thereafter he applied for a provisional licence to enable him to take a driving test. The local council refused to issue a licence and the man appealed to the magistrates' court against this refusal. The medical superintendent of a mental hospital gave evidence that he would be quite prepared to let the appellant drive with him and that he did not think that there would be undue risk to him or to the public. He added "I would not like to send him up the new motorway and expect him to read all the signs rapidly, but I think that would apply to many of us."

The county medical officer said that he thought, that with road conditions as they were now, it was essential for every driver to have reasonably average intelligence and that a person of low intelligence like the appellant should not drive.

The court decided that as the appellant was not a certified mental defective he should have the opportunity to take a driving test.

These are difficult cases to decide, with the possible hardship and inconvenience to the individual to be weighed against the potential danger to all other road users. It is one of those cases in which the passing of a driving test might not prove at all conclusively that the driver ought to be able at all times to take his car out amongst the traffic of today.

Drink and Driving

This is so important a subject that we make no apology for writing again about it. This time we have in mind a long article published on November 9, in the *Liverpool Daily Post* which calls attention once again to the fact that it is almost certain that drink is a factor in a considerable percentage of accidents which, officially, are recorded as being due to some other cause. The writer comments on the reluctance of juries to convict in drunken driving charges. He gives figures that in Lancashire in 1957 juries convicted only 35 *per cent.* of those brought before them. In the same year there were convictions in 91 *per cent.* of such cases tried in magistrates' courts. The writer adds that "the jury-magistrate ratio of convictions in such cases is reflected throughout the country." His opinion is that the basic difficulty in this country in getting something effective done to check on the driver who has drunk more than he should is that "drunken driving carries too little social stigma," and he suggests that the public must be persuaded to alter their attitude and to accept proposals for adequate tests to deal with the problem. In his own words "once and for all the public must be convinced that condemnation of driving even slightly under the influence is not prudishness but commonsense."

Incidentally the article mentions two matters which are new to us. The first is that in Stuttgart taverns slot machines

enable motorists to calculate the amount of alcohol in their blood, and the second is that there has been developed in Denmark an invention, a dash-board breath sensitive device, which automatically cuts out a car's ignition when a drunken motorist gets into the driving seat. This latter device must be a very sensitive and discriminating one if it so reacts to the driver's breath and yet remains unaffected by that of the passengers in the car so as to enable a sober driver to drive those who have dined not wisely but too well.

Responsibility for After-care

The *Approved Schools Gazette* for October contains some pertinent remarks on after-care, with special reference to the proposal that this should be the responsibility of the probation service. The writer in the *Gazette* considers that after-care should remain the statutory responsibility of school managers, and that while the present system is inadequate, because of the strain put upon the staff numerically deficient, "the personal influence and legatees created during training should not end with a termination of residence." If the probation service were entrusted with after-care there would be such a termination, and the *Gazette* considers that it is no reflection on the splendid work of the service to say that after-care would suffer if it were made responsible for it.

The trouble with the present system, the writer thinks, is that welfare officers are grossly inadequate in numbers. So he does not favour the proposal that welfare officers should act as supernumary housemasters or that there should be a welfare officer solely concerned with the children from an approved school. No—the present system is the best, provided it is properly staffed. The writer considers that the existing number of welfare officers should be doubled, and that liaison between the schools should be increased. Linked with this, not unnaturally, is the question of pay, and here the writer thinks that the approved school welfare service has never had a fair deal, and that it has suffered unduly from a niggardly attitude on the part of the Treasury. All in all there is much food for thought here, especially when we consider society's obligations to the ever increasing number of children being committed to approved schools.

Sparing the Child

One of the most distressing features of offences involving indecency with children is the necessity for taking statements from them and for their subsequent appearance in court to give evidence. In some cases the child may have to appear before a magistrates' court and again at quarter sessions or Assizes. All this is a trying ordeal for the child and tends to make a lasting impression on her mind of an incident which it would be far better for her to forget if possible. That is why persons particularly interested in the welfare of children try to find some means of avoiding the need for a child to give evidence, or at least of avoiding several appearances.

In a case reported in the *Cambridge Independent Press and Chronicle*, in which an elderly man pleaded guilty to a charge of indecent assault on a girl aged 10, it was urged in his defence that he had not put the child to the ordeal of appearing in court to give evidence. How far this fact influenced the justices we do not know, but the chairman, announcing the decision of the bench to impose a fine of £50 with costs, said they had considered carefully what was best to do to and for the defendant.

No doubt a man who is guilty is entitled to put the prosecution to the proof of its case and to profit by its weakness if he can without resort to lying. Whether this is taking the highest line from a moral point of view is a matter of opinion, with which we are not here concerned. What we think would be generally admitted is that if a man who is guilty sincerely regrets his offence and, in order to spare a child from a painful and possibly damaging experience, decides to plead guilty rather than take a chance before a jury, he shows himself to be worthy of consideration and perhaps exceptional leniency. It is hardly necessary to add that no one but the defendant's advisers ought to suggest to him that he should plead guilty.

Light: Local Land Charges

Our article at p. 641, *ante*, had been set up in type before we received our copy of the Rules made by the Lord Chancellor of which we spoke at p. 643. Those Rules came into operation on October 16, 1959, and are entitled the Registers of Local Land Charges (Rights of Light, etc.) Rules, 1959, S.I. no. 1733. They contain the detailed provisions for giving effect to the Rights of Light Act, 1959, so far as that Act depends upon entries in the register of local land charges. A covering memorandum issued from the Ministry of Housing and Local Government, memo. 233 L.C., points out what is important to the registrar, namely that there is no obligation upon him to verify the title of the owner who applies for registration. The registrar will, however, no doubt be careful to see that the application is satisfactory on the face of it, and that there are no obvious omissions of consents by other persons with an interest in the land, where application is made to cancel or vary a registered notice. The memorandum also suggests that registrars should insure against the risk of errors for which they may be personally liable. The fee of £10 for the application to register the initial notice is intended to cover the insurance premium, as well as the work involved. This is higher than many comparable fees, but is obviously much less than the cost of putting up a screen upon the land, and therefore can hardly be a deterrent to taking advantage of the new Act. The registered particulars will appear in a new part (part XI) of the register.

Interference with the Tenant

Two instances of apparent interference with the enjoyment by a tenant of his house have received some prominence in the daily Press. One concerned a local councillor who occupied a council house and who felt very annoyed because the housing committee had warned him that he might be evicted unless he tidied his garden. He admitted to a newspaper reporter that the garden was in a deplorable condition but complained that his time was taken up so much with council work that he had no spare time for gardening. If, as is usual, it was a condition of his tenancy that the garden should be kept in reasonable order this requirement must be observed, and it can be no answer to say that he was too busy with his personal affairs or even with council business. But private tidy gardens when visible to the public are a general amenity as are well kept lawns or flower patches provided by a local authority in open spaces or along the public roads. Unless however a tenant can be charged with an offence relating to noxious weeds the only remedy is between the owner and the tenant which depends on the precise terms of the tenancy agreement or lease. Another kind of garden untidiness may be a closed churchyard. For this, the local authority may in certain

circumstances become responsible. But it was shown recently that there was no obvious remedy where the burial authority was a public company which had gone into liquidation.

Quite a different kind of complaint by a council tenant was about a housing officer who demanded the right to inspect the state of repair and cleanliness of the interior of his house. He, also, had no right to prevent this because it was one of the terms of his tenancy that such inspection could be made. His real complaint was that the inspector went so far as to require the beds to be stripped which, as an old soldier, he thought was comparable with barrack-room inspection—then, however, sanctioned by army regulations. Because he refused admission to the officer he is said to have been threatened with eviction.

A tenancy from a private landlord may also include some such provision for inspection particularly in the case of a flat, but the power of the landlord must depend on the precise terms of the tenancy agreement. There is, however, a power of inspection which does not depend on the terms of a tenancy agreement. Under the Public Health Acts it is the duty of the local authority to cause their district to be inspected for the detection of matters requiring to be dealt with as a statutory nuisance. For this purpose action may be taken if any premises are in such a state as to be prejudicial to health or a nuisance. Further, it is the duty of the local authority under the Housing Acts to cause inspections to be made with a view to ascertaining whether any house is unfit for human habitation. The old adage " an Englishman's home is his castle " may now be meaningless. He may be living in a house which is in fact a castle and may not be able to prevent the local authority demanding admission for the purpose of inspection if neglect leads to a nuisance. This may not be altogether inconceivable if taxation makes owners of castles more and more impoverished.

MAINTAINING A PRIVATE OPEN SPACE

A point has been put to us upon the Open Spaces Act, 1906, which we do not remember to have seen before. That Act is not well drafted, having obviously been put together of bits and pieces from different sources without their being properly co-ordinated. The present point springs from an ambiguity in s. 9. It has been suggested to a local authority that they should undertake the care and maintenance of some private open spaces belonging to houses in the town. It might often be helpful to the owners of such open spaces to be relieved of expense without losing control, and a local authority could often undertake their maintenance at less expense than the owner, because the work could be combined with the maintaining of pleasure grounds and gardens which are open to the public. The expenditure of public money might be justified, because many private grounds such as the squares in London, and similar fenced spaces in the older provincial towns, have an amenity value for the public as well as for the houses to which they belong, the occupants of which have the sole right of going into them. The question is, however, not whether the idea is a good one but whether a local authority has power to care for such grounds at the expense of the ratepayers. Section 9 of the Open Spaces Act, 1906, enacts amongst other things that a local authority may acquire any estate or interest in an open space as defined by the Act, and may also by agreement undertake the care, management, and control of such an open space. The " care " can be entire or partial, which suggests that the section contemplated their doing the work upon land which was partly the responsibility of other people, as would be the case with a London square or the grounds belonging to a block of flats, to take two familiar instances. The council's power of acquiring a freehold or leasehold interest, which comes in para. (*a*) of the same section, will naturally involve a power of control, and thus will attract the provisions of s. 10 of the Act. This says that where an open space is subject to the control of the local authority it shall be their duty to arrange for enjoyment of the open space by the public. This would be inconsistent with the purpose of the garden in a square or the land surrounding a large block of flats, and the papers before us do not suggest an intention that the local authority shall acquire any estate or interest.

It must apparently be para. (*b*) already quoted, which the local authority have in mind—the paragraph which speaks of entire or partial care, management, and control. Can these words joined by the conjunction " and " (not " or ") be separated, so as to enable the local authority to undertake care without undertaking management and control? The Local Government Act, 1933, empowers a local authority to make contracts which are necessary for the purpose of any of its functions, and defines the word " functions " to mean both powers and duties. It would follow, therefore, that if the council had power to undertake the care of a piece of ground they would have power to make a contract for that purpose, and the money they laid out for the purpose of the contract would not be spent *ultra vires*. The real question therefore is whether the three nouns, " care," " management," and " control," in para. (*b*) of s. 9 of the Act can be read disjunctively. On the whole we think that they can not. One finds in this part of the Act provision for acquiring interests over and doing many things in open spaces but always to the intent, if we rightly understand the purport, that the public at large shall have enjoyment of the open space. It would be anomalous, and inconsistent with the tenor of the Act as a whole, if the council by picking upon para. (*b*) in s. 9, and then dissecting the paragraph, could do one only of the things therein named—namely undertake the care of an open space without assuming its management and control. It would be possible to read para. (*b*) in isolation, so as to authorize the local authority to undertake the care of a piece of land, by agreement with the owners of that piece of land, while leaving its control to them, but we think this would be inconsistent with the remainder of the Act. However convenient it might be for the council in some cases, to find full employment for its maintenance men and the plant which it employs on its own public parks and pleasure grounds, by using these upon other people's land by agreement with the owners of that land, and however desirable in some towns this might be by way of improving general amenities, it would often be regarded as invading the province of commercial firms engaged in the maintenance of ornamental grounds, and if the council were to undertake this sort of work they might be challenged upon the ground of *vires*, either in the High Court or before the district auditor, if the accounts were subject to full district audit. We think, therefore, that the proposal is one which it would be wiser not to follow.

MENTAL HEALTH ACT, 1959—II

By JOHN MOSS, C.B.E.

(*Continued from p. 658, ante*)

PART II

Part II empowers local health authorities to provide under s. 28 of the National Health Service Act, 1946, certain services now provided under the Mental Deficiency Acts, and by removing some restrictions in the National Assistance Act, 1948, and the Children Act, 1948, gives local authorities greater freedom to organize services for mentally disordered persons within the framework of their general health, welfare or child care services, as they may think appropriate.

Local Health Services

Under s. 28 of the Act of 1946 a local health authority may with the approval of the Minister and to such extent as he may direct, make arrangements for the purpose of the prevention of illness, the care of persons suffering from illness or mental defectiveness, or the after-care of such persons. This power is now extended and amplified to include further functions specified in s. 6 in regard to persons suffering from mental disorder. The section cannot come into operation until the Minister has approved new proposals by the local health authority for making arrangements accordingly, which they were directed to submit by not later than April 1, 1960, in Circular 28/59 dated October 12, 1959.

The proposals of the local health authority must include provisions as to providing residential accommodation; training or occupation centres; the appointment of mental welfare officers and the exercising of powers as to guardianship. There is a new power for the authority, in the case of persons in residential accommodation under the age of 16, to make them payments for personal expenses. This corresponds with the power given by the Children Act to give pocket money to children in the care of local authorities under that Act.

Residential Accommodation

Alternative methods are open to local authorities in providing residential accommodation either under the National Assistance Act or under the Mental Health Act. This is made possible by an extension of the powers of local authorities under the National Assistance Act which restricted their duties to persons for whom provision was not available under another statute (s. 8). This provision was then made to differentiate between the powers of the Minister, through regional hospital boards, to provide hospital accommodation, and of local authorities to provide residential accommodation for those not entitled to hospital care or treatment. Some of those who will need to be provided with accommodation under the Mental Health Act will be little, if any, different in characteristics from some who are already accommodated in homes provided under the National Assistance Act. Others will clearly need to be accommodated in homes specially provided, but it is in the discretion of the authority to provide such special accommodation also under the National Assistance Act: or some accommodation may be provided under that Act and other accommodation under the new Act.

In regard to children there is a similar power for the use of accommodation provided under the Children Act, 1946. But a local health authority may provide accommodation for a mentally disordered child under the Mental Health Act even although the child is already in the care of any other authority under the Children Act. Here again there is, therefore, power for the local authority to make the residential arrangements which seem to be most suitable in the individual circumstances by operating under either Act.

Attendance at Training Centres

For the benefit of children there is power for the local health authority to require the parent of a child to cause a child to attend at a training centre if the child is not receiving adequate training comparable with the training which he would receive at the centre (s. 12). This applies to any child who is the subject of a decision under s. 57 of the Education Act, 1944, that he is suffering from a disability of mind of such a nature or to such an extent as to make him incapable of receiving education at school. These provisions therefore amend the Education Acts by revising the procedure to be followed when children are found to be unsuitable by reason of mental disorder for education at school. Parents have, however, a new right to apply for review of such cases by the Minister of Health.

Welfare of Hospital Patients

A rather different type of matter which is included in part II is a requirement that the local authority must, in certain circumstances, arrange for the visiting of mentally disordered patients in hospital. This duty concerns a child or young person in respect of whom the rights and powers of a parent are vested in a local authority by virtue of the Children and Young Persons Act, 1933, s. 75, or the Children Act, 1948, s. 3; and also a person who is subject to the guardianship of a local health authority under the Mental Health Act; or a person the functions of whose nearest relative under the Mental Health Act are for the time being transferred to a local health authority. Where such a person is admitted to a hospital or nursing home (whether for treatment for mental disorder or for any other reason) the authority must arrange for visits to be made to him and must take such other steps in relation to the patient as would be expected to be taken by his parents (s. 10).

PART III

Registration of Homes

Part III provides for nursing and residential homes for mentally disordered persons to be registered and inspected by local authorities *i.e.* the councils of counties and county boroughs under the same enactments as other nursing and disabled persons' homes (s. 14), subject to some special provisions (s. 15); and for the inspection of other premises in which mentally disordered persons are believed to be living without proper care (s. 17). These provisions replace various arrangements for the registration and visiting of premises under the Lunacy and Mental Treatment Acts and Mental Deficiency Acts.

The powers conferred on local authorities are, however, slightly different to those provided by the Public Health Act, 1936. They relate specifically to "mental nursing homes" which are defined as any premises used or intended to be used for the reception of, and the provision of nursing or other medical treatment for, one or more mentally disordered patients (whether exclusively or in common with other

persons), not being (*a*) a hospital; (*b*) any other premises managed by a Government department or provided by a local authority. Under the Act of 1936 a "nursing home" needing registration was one provided for the nursing of "persons" suffering from any sickness, injury or infirmity. The Act of 1959 refers however to "one or more" patients. Section 192 of the Act of 1936 empowers a local authority to grant exemption from registration to nursing homes not carried on for profit. The provision does not, however, apply to mental nursing homes (s. 14 (44)). The Mental Health Act also lays down special provisions as to registration of this kind of home for the contravention of which there are penalties. Further the Minister may make regulations as to their conduct (s. 16).

Similarily the provisions of the National Assistance Act for the registration and inspection of homes for disabled persons and old persons are applied to "residential homes for mentally disordered persons." This means "an establishment the sole or main object of which is, or is held out to be, the provision of accommodation, whether for reward or not, for persons suffering from mental disorder, not being (*a*) a mental nursing home; (*b*) a hospital; or (*c*) any other premises managed by a government department or provided by a local authority."

The power of inspection of a registered home is given to any authorized officer of the local authority by s. 39 (2) of the Act of 1948 but the Mental Health Act specifies a mental welfare officer as the person for this purpose in respect of a home for mentally disordered persons.

(*To be continued*)

WIDENING PRIVATE STREETS

We are indebted to a reader of our series of articles upon the Highways Act, 1959, for pointing out that what we said about s. 201 at p. 541, *ante*, might be misleading. It is not that section which gives power to widen a street when private street works are being carried out; for the power to widen one looks back to s. 71. The purpose of s. 201 is to ensure that widening done at this stage shall not be charged as part of the private street works. The safeguard is parallel to that contained in s. 200, the effect of which we stated more fully in our article; s. 200 deals with changes within the existing boundaries of the private street at the stage of making up and taking over, and s. 201 is directed to what happens if those boundaries are extended. Both sections can be summarized by saying that what the local authority do, over and above making up the private street in the form in which it was dedicated as a highway, is to be paid for by the inhabitants at large (to revert for the moment to this historic phrase), because it is the general public rather than the frontagers upon the private street who will benefit by the changes made.

Section 71 is one of the new provisions in the Act of 1959, and Lord Reading's committee explained it in para. 117 at p. 44 of their report, Cmnd. 630, and again at p. 102 in their notes on clauses of the Bill. Section 201, which was then cl. 200, is explained at p. 45 and more fully at p. 134. The widening of a private street at the stage of making up and taking over can be a simple and straightforward operation, but may sometimes be involved with a most difficult matter to which s. 159 of the Act is directed. This sprang from recommendations of a sub-committee which had been appointed to examine problems arising under s. 30 of the Public Health Act, 1925, a section which had given rise to doubts throughout its history. In our article upon the Act of 1959 we suggested at p. 539, *ante*, when we came to speak of s. 159, formerly cl. 158, that the sub-committee and the main committee had slightly misdirected themselves upon the existing law; however this may have been, it was certainly true that s. 30 of the Act of 1925 was so obscure that less use was made of it than had been expected when that Act was passed.

It might not unfairly have been described as an attempt to get something for local authorities for nothing, even though that "something" was less than some of them would have liked to get. The new Act therefore makes substantial modifications when reproducing s. 30 of the old Act in s. 159, and gives an explicit power in s. 71 for the widening of streets, both those which are already repairable by the highway authority and those which are being made up and taken over after having first been laid out as private streets. In para. 117 of the report the main committee expressed the view that these changes proposed by the sub-committee could properly be made in a consolidation Bill; because the local authority could already secure that the street would be wider after it was made up by purchasing land, and dedicating this in advance of setting in motion the procedure for making up the private street. As the law stood before the new Act, this would have meant that the dedicated highway would comprise two strips, or three strips if the land for widening was acquired on both parts of the private street, *viz.* the land so acquired and the strip which was still in private ownership. This was clumsy, and involved the objection that the existence of a strip already vested in the local authority, between the private street and the property fronting on the newly added strip might prevent the local authority from charging the expense of making up the private street upon the frontagers who had thus been cut off from it. Section 71 (which provides for widening streets whether already maintainable by the highway authority or still private streets) accordingly ensures, when read with s. 201, that if this process is carried out at the same time as the private street works (as is commonly convenient) the frontagers may still be charged the expenses proper to the private street works, which expenses are to be neither increased nor lessened by reason of the fact that the street is being widened at the same time.

We do not wish to say much more about s. 30 of the Act of 1925, but since our article was written we have seen a question raised about the position of a landowner where an order under s. 30 is already in existence and no building has so far taken place which would be affected by that order. Although s. 30 of the Act of 1925 will be repealed by the Highways Act, 1959, so that no fresh orders under it can be made after this year, its repeal is subject to the transitional provisions set out in para. 22 of sch. 24 to the new Act. Under this paragraph an order under s. 30 already applying to a highway continues to apply, and excludes action under s. 159 of the new Act, but the local authority are given power to revoke that order, and if they do so s. 159 of the new Act will come into operation instead of s. 30 of the old, and the local authority can proceed thereunder. The new section is more advantageous to the local authority and to the landowner than the old, and we imagine that there will be no difficulty in arranging that orders now outstanding under s. 30 shall be revoked, where they have not yet taken practical effect because the land has not been built on.

RATE COLLECTORS REDUNDANT?

Rates have certain virtues, oft proclaimed. They provide a sure source of revenue, the income taxed not being subject to violent fluctuations of value; and they are collected easily and economically. It is perhaps natural also to think that lustre is added by longevity; some believe that so long a life could only have been achieved by a creation embodying virtues of the highest sort.

But the defects of rates have become increasingly apparent over the past 40 years. As social expenditure has grown so have the rates shown themselves incapable of financing the expansion, or indeed of meeting prolonged emergencies. The administration and disbursement of domiciliary relief proved altogether too great a burden for depression struck authorities of the late twenties. Long and bitter complaints about the injustice of the local burdens of road maintenance led to financial responsibility for trunk roads being removed entirely from local authorities. Deficiencies due to insufficient finance helped to influence the decision to set up hospital boards. Now the argument is being pressed that local education authorities, too much afraid of rate increases, are not the right bodies to drive on with the vitally necessary improvement and extension of the country's education system and that if teachers of the required calibre are to be recruited and retained their stipends must not be at the mercy of the Burnham Committee.

It has been increasingly accepted that certain bodies of ratepayers should be excused from paying their full share of the rate burden: such bodies are sometimes classified and determined according to the type of hereditament occupied and sometimes by a test affecting the whole area of a rating authority. Very few ratepayers at present do in fact pay on the full current value of the rated hereditaments. Agriculture pays nothing, industry and freight transport only a half, while the domestic ratepayer continues to be assessed on 1939 values. Whether the next valuation, already postponed to 1963, will, if it takes place, then in fact raise those values to current levels remains to be seen: the outcry over commercial properties following the last revaluation was effective in securing a substantial reduction of 20 *per cent.*

The process continues: the latest step being the recommendation of the Pritchard Committee that a mandatory relief of 50 *per cent.* of the rate charge should be given to charitable bodies.

The re-christened Rate Deficiency Grant is a continuing acknowledgment of another unsatisfactory feature of local rating, namely the considerable and serious differences of rating resources and the consequential need of outside aid. Rateable value per head in Merthyr Tydfil is £7 10*s.*; in Blackpool it is £23 11*s.* In Durham it is £10 8*s.*; in West Sussex £19 3*s.*

Weaknesses of this kind have inspired over the years the search for alternative sources of income and led to proposals for the creation of sales taxes, poll taxes, local entertainment taxes, the assignment to local needs of a proportion of national taxes, and the institution of a local income tax. The last is now reported again to be a live issue. The *Sunday Express* of September 6 states: "A revolutionary plan to sweep away council rates and substitute a local income tax will be considered by the next Tory Government. The new scheme, which would absorb the Schedule A Property Tax, would enable local income tax of 1*s.* 3*d.* in the £ to replace both local rates and that proportion of national taxes required to cover the Exchequer grants to councils . . .

"Senior Ministers privately admit:

"That the present system of financing local government is a jungle of complications, rigidity and injustice.

"That the position will get worse in 1963, when the revaluation of houses will result in sharp increases in rateable values for home-owners, and will touch off a major political controversy.

"That the only possible alternative is to replace rates by some form of local income tax."

Of course, this proposal is not by any means new. It was considered and condemned by the Royal Commission on Local Taxation of 1896, largely because of the difficulty in deciding to what locality an income belongs; incomes are often earned in areas different from those where the recipient resides, the recipient may have more than one place of residence, he may have sources of income in many areas, and there is similarly the great difficulty of companies covering wide areas of the British Isles and beyond.

The latest report on the subject was issued in 1956 by a group of members of the Royal Institute of Public Administration who set out to investigate possible new sources of local revenue. Their first choice was a local income tax. It appealed on grounds that had seemed good to earlier investigators also, two important advantages being the strengthening of local independence of the central government and the creation of a better public attitude to local expenditure. Inflation and expanding services must cause continual increases in rates because changes in rateable value are only made at long intervals; the real burden of rates is not usually at all heavy but constant increases alarm some councillors, and arouse the ire of ratepayers' associations.

From the point of view of justice, as well as public relations, there are great advantages in substituting a tax on income for one based on rateable value; this is true despite all the current variations of the latter created by attempts to placate various classes of ratepayers.

There remains the problem of which local authority should receive the proceeds of the tax. The Victorian Lord Goschen said: "It appears to me impossible to devise an equitable local income tax, for you cannot localize income. An attempt was made in Scotland, and it broke down when an English Lord Chancellor, who drew his £10,000 a year in London, but had a small place in Scotland, was made to pay income tax on the whole of his income in that country as well." Refinements of the crudities of Victorian finance there would undoubtedly be in any new scheme but great difficulties would remain. A vast number of people now work in different areas from those where they reside—one has only to think of the millions daily entering London or the thousands streaming out from one steel works when the shift ends: higher standards of living, including more motor cars, will only increase this trend. A local income tax levied on London workers and retained by the authorities in which places of work are situate would do little to help the dormitory areas around the Metropolis.

We conclude that the present is an opportune time to study the subject afresh, because of the weaknesses and inequities of the present rating system, and the further rating problems looming up. On a national basis an income tax is obviously preferable but the implications of its local application require to be carefully and seriously appraised. Problems of distribution are less the fewer authorities there are, thus the creation of a local income tax is itself a powerful argument for reductions—possibly very large reductions—in the number of local authorities. And the more intractable the distribution question the more those devising the scheme may feel that the simplest and most practical solution will be to abolish local taxation in the shape of rates leaving local authorities to become wholly dependent on doles from the National Exchequer for their share of tax income.

These are the dangers to be faced and overcome if the last state of local government is not to be worse than the first.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Hodson and Ormerod, L.JJ., and Upjohn, J.)

HAZELDINE AND OTHERS *v.* MINISTER OF HOUSING AND LOCAL GOVERNMENT AND ANOTHER

November 2, 3, 1959

Compulsory Purchase—Police purposes—"Functions of the police authority"—Land required for homes for police officers—Police Act, 1946 (9 *and* 10 *Geo.* 6, *c.* 46), *s.* 15.

APPEAL from a decision of LORD PARKER, C.J.

In exercise of the power "to purchase compulsorily any land . . . required for the purpose of any of the functions of the police authority" conferred by s. 15 of the Police Act, 1946, a combined police authority made, and the Minister of Housing and Local Government confirmed, an order for the compulsory purchase of certain land required for houses for police officers which were reasonably necessary for the provision of an efficient police service in the authority's area.

Held, "the functions of the police authority" must include such things as were reasonably necessary for the provision of an efficient police service, and so this compulsory purchase order was within the power conferred by s. 15.

Counsel: *I. D. L. Glidewell* for the owners; *Cumming-Bruce* for the Minister and the acquiring authority.

Solicitors: *Jaques & Co.*, for *Whittingham, Glass & Morrison*, Manchester; *Solicitor, Ministry of Housing and Local Government.*

(Reported by Henry Summerfield, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Lord Parker, C.J., Cassels and Diplock, JJ.)

R. *v.* STEWART. R. *v.* HARRIS.

November 9, 1959

Criminal Law—Indictment—Possessing explosives—Need to allege possession "knowingly"—Explosive Substances Act, 1883 (46 *and* 47 *Vict., c.* 3), *s.* 4 (1).

APPEALS against conviction.

The appellants were convicted at Cambridgeshire quarter sessions of possessing explosive substances, contrary to s. 4 (1) of the Explosive Substances Act, 1883, and each was sentenced to seven years' imprisonment. Section 4 (1) of the Act provides: "Any person who . . . knowingly has in his possession . . . any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he . . . does not have it in his possession . . . for a lawful object, shall, unless he can show that he . . . had it in his possession . . . for a lawful object, be guilty of felony. . . ." The word "knowingly" was omitted from the indictment, and in the summing-up the only direction given was in regard to possession and not in regard to knowledge that the things possessed were explosive.

Held, that the prosecution had to prove that each prisoner had possession of the explosive substance and that he knew that it was explosive; as the indictment had been wrongly drawn and there had been no direction on a vital matter, the appeals must be allowed and the convictions quashed.

Counsel: *C. G. L. Du Cann* for the first appellant; *Dunlop* for the second appellant; *William Howard* for the Crown.

Solicitors: *Lincoln & Lincoln; Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Phillimore, J.)

FILDES (FORMERLY SIMKIN) *v.* SIMKIN

June 23, October 6, 7, 1959

Husband and Wife—Maintenance order—Subsequent divorce and re-marriage of wife—Payments under order continued by husband in ignorance of re-marriage—Husband informed of re-marriage—Remission of money paid from date of application to discharge order—Magistrates' Courts Act, 1952 (15 *and* 16 *Geo.* 6 *and* 1 *Eliz.* 2, *c.* 55), *s.* 76.

APPEAL from justices.

The husband had paid sums due under a maintenance order by way of cheques to the collecting officer under s. 5 (*c*) of the Summary Jurisdiction (Married Women) Act, 1895. He subsequently went abroad, and though the wife divorced him and married another man, he continued to make the payments, he being unaware that she had re-married. When appraised of the position, the husband sought, by complaint through his solicitor, to have the order discharged from the date of the re-marriage.

Held, s. 76 of the Magistrates' Courts Act, 1952, which gave the court power to remit arrears under a maintenance order, applied only to money due and unpaid, and not to sums paid to, though not collected by the wife from, the collecting officer, and therefore, the magistrates only had power to make an order remitting the money accumulated from the date of the husband's complaint and not from the date of the re-marriage nor from the date of the hearing.

Counsel: *J. G. K. Sheldon* for the wife; the husband did not appear.

Solicitors: *Woodcock, Ryland & Co.*, for *Russell & Russell*, Bolton.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

CARAVANS AS HOMES

One person in every 300 of the population of England and Wales lives in a caravan, yet there has been little evidence of any public policy likely to reduce the disadvantages of caravan living or to provide an alternative way of limiting the needs which have usually given rise to this way of life. Out of the 3,000 multiple caravan sites (excluding the 13,000 single caravan sites) only about 100 are owned and run by local authorities and many of these were developed primarily to provide temporary accommodation for those who were being displaced from sites elsewhere. The growth of the number of caravan dwellings over the last few years, shows no sign of decreasing and all evidence shows that residential caravaning is here to stay for, at any rate, some years ahead.

These are some of the unpalatable facts brought forward by Sir Arton Wilson in his report to the Ministry of Housing and Local Government and from an examination of the report it would appear difficult to reach any conclusion other than that the majority of local authorities and those bodies concerned nationally with social welfare, as well as the Minister himself (until he set on foot the investigation of which this report is the outcome) have not adequately considered the needs of a very large minority of the population.

Sir Arton Wilson estimates that, excluding gypsies and vagrants which are specifically excluded from the report, there are about 60,000 caravan homes in England and Wales, housing some 150,000 people. These homes are spread far from evenly over the country. The south has many more than the north; over half are to be found within the 14 counties that lie closest to the metropolis, and about a quarter of the town and district councils of England and Wales report having no residential caravans in their areas at all. He concludes from his investigations that residential caravaning is of significant proportions in only two very distinctive types of areas. One is the area that attracts people who move their homes on retirement; the other and more important, is the area in which there has been a recent marked expansion of industry without a corresponding provision of housing.

With the co-operation of the Social Survey Division of the Central Office of Information, Sir Arton has carried out a thorough investigation of the type of people who make their homes in caravans. Of these, two-thirds are young married couples of whom perhaps half have children, and about a quarter of all residential caravans seem to be the homes of couples who moved straight into a caravan on marriage. The remaining third is composed largely of people over 60—either retired couples, or single people among whom women predominate. It is noteworthy that out of the total caravan population something like 20,000 are children under five (nearly twice the proportion found in the population at large) and 10,000 are school children. Economically and socially caravanners appear to be a cross cut of the general population, though with relatively few of the richest or poorest classes. Sir Arton emphasizes that it would be wrong to picture them as belonging mainly to the depressed or shiftless classes and that the typical caravan family is, if anything, rather more endowed with self respect, initiative and a keenness to get on and to make a decent life, than many of similar classes who are to be found in more conventional kinds of accommodation. It is not surprising to learn that the largest proportion, the

young marrieds, have normally chosen a caravan life because they want a home of their own in the area where the husband works, and have no apparent prospect of any other self contained accommodation they consider suitable. Amongst the older people economic reasons appear to be the most general. It is estimated that only between five and 10 *per cent.* of residential caravanners are such because they like caravan living for its own sake, and about 80 *per cent.* are either wanting to move into a bungalow, house or flat; or find caravan living no more than moderately satisfying.

Of the conditions under which caravan dwellers live, Sir Arton estimates that half have caravans of modern design which are adequately equipped, and the remaining half live in older vans, many of which are of poor or indifferent quality as regards their structure and internal facilities. Half the caravans are at present overcrowded by conventional housing standards. Amongst caravan sites only a small minority are well located, attractive and well organized, and an equivalent minority are unpleasant, insanitary and ill run. The rest, in varying degrees, leave something to be desired as a physical and social environment for people's homes. The majority of sites are operated with either specific planning permission or existing usage and most of these sites are covered by a licence under the Public Health Act, but some 10,000 caravans are on sites which are apparently operated in contravention of the Town and Country Planning Act.

Sir Arton gives considerable detail of the finances of both the caravanner and the site operator. He reaches the conclusion that for the caravanner this form of residence is financially no more attractive than going into a council dwelling. For the operator an important factor is his length of tenure. If he is able to spread his capital costs over a long period, he is more likely, not only to invest more in the site, but also to run it at a reasonably high standard. If, on the other hand, he has tenure for only a few years, he has little incentive to do other than put into it the bare minimum of expenditure and get out all he can. Sir Arton points out that out of the 13,000 sites accommodating 42,000 caravans granted planning permission since the beginning of 1954, in the majority of cases the permissions were for periods of five years or less—often much less; terms of one or two years being by no means uncommon. Only 175 sites accommodating 3,500 caravans were granted permission for 15 years or more. Where permission has been granted on appeal to the Minister, similar conditions are imposed, and Sir Arton concludes that most local authorities use their control powers in a way intended to discourage and restrict caravan living rather than to give it positive and constructive recognition.

The report states at length the reasons which prompt local authorities to generally oppose caravaning. These may be summarized as concern for the preservation of green belts (the fact that these belts are normally surround areas with expanding industry means that they are more threatened by the growth of caravans than elsewhere); the concern for the preservation of local amenities generally; fear of an unplanned influx of population, and deference to views of existing local residents. But there is a general objection to caravan living in principle which stems from the belief that they are sub-standard accommodation and that they *must* be a bad thing. Local authorities who gave their opinions on this subject expressed their fears of the effect on the caravanners' health, safety and general welfare. Caravan manufacturers and site operators on the other hand, pointed out that the accommodation that caravan dwellers would probably have had to occupy might well have been worse. The report points out the inadequacy of the Public Health Act in enabling local authorities to ensure adequate conditions on caravan sites. Although these authorities are empowered by the Act to require the owner of a caravan site to abate a nuisance and to promote byelaws where caravans are used as dwellings, these powers are, on the whole, effective only in dealing with extreme insanitary conditions and not suited to the aim of achieving any positive environmental decency. The licensing system has been found to be lacking in that it refers to *public health*, and that it does not empower the consideration of such matters as a site's location, appearance and general amenities. Local authorities have found that they are restricted to dealing with only a limited range of matters, such as the siting and number of caravans, the water supply and sanitary arrangements. The report mentions a further problem with which local authorities are confronted, namely, the ease with which a site may be started up before any need for applying for a licence arises, by use of the 42 days exemption. Thus the authority may be confronted with a *fait accompli* which it is bound to accept unless it is prepared the formidable task of rehousing or at least relocating the residents. The same problem applies to the permission to use land for moveable dwellings for 28 days in any one year, granted under the General Development Order, 1950, and the report recognizes that enforcement proceedings are difficult and lengthy.

From the report there would appear to be substantial agreement amongst all the various interests involved as to future policy. The areas of agreement include the fact that caravaning is here to stay and had better be dealt with positively than negatively and that there should be more effective and wide-ranging control both under public health and planning. There remain, however, many differences and difficulties. On the one side there is the distrust felt by local authorities towards caravan dealers and site operators and on the other the need that nothing should be done which might have the effect of diverting effort and interest from the provision and use of better and permanently based housing properly integrated in the community. But the chief problem would seem to be that all the suggestions that have been made have dealt with the symptoms of the problem and not with the basic problem itself, namely, the ever-growing population of the large urban areas and the inadequacy of plans or means for housing it. As long as this situation exists—and it is not one that, with the best will in the world, can be solved at short notice—residential caravans would seem to be performing a necessary service. "There is one matter on which all the organized interests concerned appear to be in full agreement," Sir Arton concludes. "The existing situation with regard to residential caravaning is full of difficulties and dangers that call for urgent Government action."

TAMWORTH'S "DOUBLE"

During the year 1960, the borough of Tamworth will be celebrating a double anniversary; the 400th anniversary of the granting of its first charter by Queen Elizabeth, and the 1,000th anniversary of the death of the patronal saint, St. Editha. The corporation, the parochial church council and other organizations will co-operate in preparing a programme to commemorate both events, to run from May to July.

ROAD CASUALTIES—SEPTEMBER 1959

There were 2,889 more casualties on the roads in Great Britain in September this year than in September, 1958, an increase of nearly 11 *per cent.*, although traffic on main roads, as estimated by the Road Research Laboratory, was 13 *per cent.* heavier than a year ago.

Almost the whole of the increase was in casualties to riders of motor cycles and motor scooters and their passengers. Casualties to occupants of other motor vehicles showed a slight decrease.

Altogether 568 people died from injuries received in road accidents last September. This was 66 more than in September, 1958. The seriously injured numbered 7,101, an increase of 1,059; and the slightly injured 21,853, an increase of 1,764.

AMPLIFICATION OF COURT PROCEEDINGS

Dover magistrates' complaint that the acoustics in their court room are bad will be given further consideration by the council's finance and general purposes committee. Recently, the committee considered a suggestion that microphones and amplifiers should be installed and decided to take no action. At a meeting of the town council, it was stated by councillor F. A. Holmes that the magistrates felt that improvements in the acoustics were essential. Witnesses were constantly being asked to speak up. After the town clerk (Mr. J. A. Johnson) told the council that the magistrates had written that a system of microphones would certainly not be acceptable to them, it was agreed that the committee should consider other means of improving conditions which would not destroy the character of the court room.

CHAIN OF OFFICE

The Cockermouth (Cumberland) urban district council has been presented with a gold chain to go with the chairman's gold and enamel badge of office. The new chain is the gift of a number of local business concerns and individuals and comprises 22 links. Engraved on it are the names of the 36 chairmen of the council since it was formed in 1894.

NOW TURN TO PAGE 1

A magistrates' court when hearing domestic proceedings shall be composed of not more than three justices of the peace, including, so far as practicable, both a man and a woman. (Magistrates' Courts Act, 1952, s. 56.)

THE WEEK IN PARLIAMENT

By J. W. Murray, Our Lobby Correspondent

The Secretary of State for the Home Department, Mr. R. A. Butler, announced his intention to set up an independent inquiry into the relationships between the police, the public and Parliament.

He made the announcement during the debate on the *Garratt* v. *Eastmond* case. He dealt with the constitutional position of the police officer, and said that he was not the servant of any authority, local or central. Acting in the office of constable, he was answerable to the law and personally responsible for his actions. Neither the police authority nor the chief officer of the police force concerned had any legal liability in such a matter. That was the position in law of the police officer.

It had been the practice of police authorities for many years to assist constables against whom writs were served in relation to their conduct on duty with the defence of the action. That policy had been followed by successive Home Secretaries and, for many years past, it had been the practice to allow the solicitor for the metropolitan police to act for a police constable defending such an action if he was requested by the officer concerned to do so. A police officer could, if he liked and asked, employ his own solicitor.

It had been, for many years, the normal practice of police authorities to stand financially behind a policeman against whom an action was brought arising out of his conduct as a police officer. That had been approved by a committee of the Police Council in 1931 and was commended by the Oaksey Committee. That practice had two good reasons behind it. First, a police constable could not be expected to carry out his duties effectively if he must on every occasion on which he found it necessary to take action pause to consider the risk of an action being brought against him for the costs of which he would be personally liable. It was surely right that he should, in general, be able to rely on the support of the police authority in meeting the cost of any action arising out of the exercise of his duty and any damages awarded against him. In that respect he ought not to be in any different position from an officer employed by a public authority. In the case of such an officer, an action would be brought against the authority, and it was only because of the special status of the constable that an action must be brought against him as an individual.

The second reason, which had been proved by experience to be right, was that it was in the interests of the person who brought an action against a policeman that responsibility for costs or damages should be accepted by the police authority. Otherwise, an aggrieved person might be awarded substantial sums and entirely fail to recover them from the defendant. It would be indefensible to allow that to happen.

There was a feeling that it was a corollary to public co-operation with the police that a policeman who misbehaved and abused his powers in relation to the public should be punished, and severely punished. From his experience, that was normally the case. It was one of his most painful duties as Home Secretary to deal with some of those cases. A policeman found guilty on a disciplinary charge had a right of appeal to him, as he was the appellate authority, and he could give an assurance that the standards of discipline in the police were extremely high.

He did not believe that in modern conditions the police could carry out their heavy responsibilities without adequate public co-operation and the fullest measure of public confidence. The relations between the police and the public were therefore fundamental to the success of police operations, and to the maintenance of law and order in the community. The issues in question—recruitment, training and discipline and organization, and relationship of central and local authorities to the police and their relations to the House and the relations of the police to the public—were complex. Underlying them were constitutional and legal principles of great difficulty and supreme importance. The time had come to have them examined with the authority and impartiality of an independent inquiry. He intended to decide the best form for the inquiry in the light of the debate.

BETTING AND GAMING BILL

Moving the Second Reading of the Betting and Gaming Bill, Mr. Butler said that the intention of the criminal law, broadly speaking might be said to be to prohibit what was injurious to society itself, or to those who, because of age or incapacity, needed special protection. It was not its function to serve as a substitute for the conscience of the individual and it was undesirable that it should try to do so. Free society was committed to a belief in self-discipline and private judgment and they should be careful not to weaken those virtues by allowing the criminal law to encroach unnecessarily on the field in which they could be exercised. It was plain that dangers not only to the individual but, also, to society, could result from immoderate gambling. It was the concern of the State that gambling, like every indulgence, should be kept within reasonable bounds. The Bill was framed with that object in mind.

The Bill implemented the Royal Commission's recommendations that betting in cash by post should be permitted and that licensed betting offices should be established where members of the public could go to place their bets in cash. The Royal Commission thought that the authority to be responsible for registering bookmakers and licensed betting offices should be a judicial body, and the schedule followed that recommendation in making the responsible authority in England a committee of the justices and in Scotland the licensing court. A fee of £100 was payable with a nominal annual fee for renewal. Provision was made for the cancellation of bookmakers' and betting agency permits by a court convicting the holder of specified offences against the Betting Acts, or of an offence involving fraud or dishonesty.

The second part of the Bill swept away all existing laws regarding gaming and paved the way for a new start according to fresh principles recommended by the Royal Commission. No game would be unlawful in itself. Gaming would be unlawful only if it broke certain rules.

In framing the Bill, the aim of the Government had been to liberalize a branch of the law which over the course of years, had become outmoded and ineffective, and therefore, treated by many people with ridicule and contempt. They hoped that the Bill—with the improvements that would be made to it during its passage through Parliament—would provide reasonable freedom for people who wished to bet or to play games for money to do so, while, at the same time, retaining sufficient safeguards to act as deterrents against their being led into excess. When the Bill was examined in committee, there would, without doubt, be found room for the loosening of a restriction here or a tightening there to make it into a code of legislation on gambling suitable to the form of our society in the 20th century.

The Bill was read a Second time by 311 to 49 votes.

CORPORAL PUNISHMENT

An amendment has been tabled to Sir Charles Taylor's motion calling for the re-introduction of the birch and the cane as punishments for certain crimes of violence.

The amendment, which stands in the name of Mr. Victor Yates (Birmingham, Ladywood) and has been signed by 34 Members, rejects the proposed re-introduction, declares that "the birch and the cane are relics of a bygone age which completely failed to protect society from crimes of violence," "deplores the panic demand for their restoration," and "calls for a further urgent inquiry into progressive methods of protecting society from such crimes."

PERSONALIA

APPOINTMENTS

Mr. Henry Patten, M.A., LL.B., deputy town clerk of Bradford, has been recommended for promotion to town clerk in succession to Mr. W. H. Leathem, LL.B., who is to retire.

Mr. Peter H. Sutton has been appointed clerk to the justices for the petty sessional divisions of East Retford and Worksop, with effect from January 1, 1960, in the place of the late Mr. A. E. S. Crosse. Mr. Sutton, who was admitted in 1952, is deputy chief clerk at Old Street Magistrates' Court, London.

Mr. W. K. Morris, M.A. (Cantab.), chief legal and administrative officer to the Cwmbran New Town Development Corporation, has been appointed general manager to the Corporation in succession to the late Maj.-Gen. T. W. Rees. Mr. Morris was latterly clerk to Whitstable, Kent, urban district council, and previously deputy town clerk of Wrexham, Denbighshire.

OBITUARY

Mr. Arthur Darbey, a former deputy town clerk of Halesown, has died at the age of 68. He was called to the bar in 1931 at Lincoln's Inn. He was deputy town clerk of Halesowen from 1940–1941 and was assistant prosecutor for Birmingham corporation at Victoria Law Courts from 1941 to 1948.

ANNUAL REPORTS, ETC.

NATIONAL OLD PEOPLE'S WELFARE COUNCIL

The report of the National Old People's Welfare Council for the year ended March 31, 1959, deals with many aspects of services for the elderly. The number of local old people's welfare committees is now 1,575. There are also 62 regional or county committees. It would seem that ways of helping the elderly, and information about developments and possibilities are not widely enough known judging by the inquiries received by the council. Publicity must be constant and in many forms. Television and sound programmes, newspapers and debates in both houses of Parliament help, particularly when producers, journalists or members seek facts from people with adequate knowledge and experience. Some of the main services provided by bodies associated with the national council are friendly visiting; assisting inquirers to find accommodation; boarding out; courses for elderly people themselves and transport by cars, specially adapted vehicles or wheel chairs.

During the year the council had discussions with the Ministry of Health regarding the future of voluntary visiting when the Ministry made it clear that they felt it essential for voluntary visiting schemes to continue and to be developed. The council has accordingly given further consideration to the whole subject and has made suggestions to local committees as to how the service can be improved. These are explained in the report. Amongst other matters referred to in the report are accommodation, on which many inquiries are received; and residential homes. The wish is expressed that more homes could be encouraged to allow residents to furnish their own room or to bring articles of furniture where they must share a bedroom. Reference is made to the practice of elderly people being referred to as "part III cases" because they are in accommodation provided under part III of the National Assistance Act and it is suggested that the use of this term is unfortunately often associated in the minds of many with the obsolete Poor Law. On boarding out, there is an account of schemes which have been organized in various parts of the country in co-operation with local authorities. There have been further developments in the training schemes provided both for voluntary workers and for matrons and wardens of old peoples homes. In the section on clubs and leisure-time activities the regret is expressed that so few new day centres were planned during the year, *i.e.*, centres for frail people who require regular transport and special facilities. A new section entitled "contribution of the elderly to the community and attitudes to ageing" refers to the fact that thousands of elderly people are quite able to lead independent lives and help each other and the young; it is suggested that there is increasing scope and need for voluntary help to be given by retired people who are themselves perhaps elderly.

ESSEX WEIGHTS AND MEASURES DEPARTMENT

Weights and measures inspectors nowadays carry out a variety of duties under many statutes and regulations that may have little or nothing to do with weights and measures. Mr. F. W. Horsnell, chief inspector for the county of Essex, in his report for the year ended March 31, 1959, expresses his opinion that it is sound administration to concentrate in one department many duties requiring for their performance the like enforcement technique and experience, visits of inspection to trade premises, and the exercise of statutory control of various aspects and details of trade practice. Economy results from the ability to combine duties upon the occasion of the official visit; the trader is enabled to seek advice and guidance readily on a number of subjects affecting his business.

Because, as is generally admitted, there are many gaps in weights and measures' legislation, recourse has to be had to any other statutes that may meet particular cases, and false trade descriptions as to weight or measure can often be dealt with under the Merchandise Marks Acts, as this report shows. Even these Acts are not available in some cases where there may be a fraud, because of the absence of any trade description. Mr. Horsnell refers particularly to the increased use of paraffin, delivered at the purchaser's door without the use of any document. Actual deficiencies have been discovered but no proceedings could be taken.

In general the position with regard to the sale of food including pre-packed foods and bread, was satisfactory during the year under review but there were some glaring exceptions. In one instance a consignment of gooseberry jam delivered to the county council was found to contain many thorns. A supply of diabetic marmalade contained an excessive amount of sugar. Among the meat supplied for schools was a quantity of mutton described and charged for as New Zealand lamb, and in some instances, stamped importation marks indicating that the meat was Australian had been sliced off before delivery. Hot milk was often found to contain added water.

A hospital ordered 84 *lbs.* of smoked haddock fillets, and a box of fish was delivered accompanied by a delivery note describing them as such. The fillets had the appearance of haddock but they had been skinned. Expert examination and analysis proved the fillets to consist of inferior fish.

A case which was dealt with under the Merchandise Marks Acts concerned a garment which was described as "all wool" and "bankrupt stock." It was found to contain 30 *per cent.* of vegetable fibre and 70 *per cent.* wool, and it was not bankrupt stock.

The inspectors carry out certain duties connected with the Road Traffic Acts stopping and weighing vehicles to check the weight transmitted by single wheels and pairs of wheels as well as the general weight upon the road. Forty-nine laden vehicles were weighed and seven were found to infringe the regulations.

ESSEX PROBATION REPORT

In his report on the work of 1958, Mr. Eshelby, the principal probation officer for this county, reflects on some of the wider aspects of probation and the demands made by them upon officers' mental and spiritual equipment. He lays stress upon the need of elasticity and the avoidance of dogmatic attitudes. No two cases are alike, and rule-of-thumb methods can only lead to failure. As a consequence he has organized a variety of activities designed to stimulate the wider interests of his staff. Home Office courses and local discussion groups all have his support, and the report mentions with gratitude the co-operation of local professional men.

Mr. Eshelby also refers to the increasing use of probation for those "who are well established in criminal habits." He rightly emphasizes the difficulties in handling probationers with bad criminal records: the reader may well ponder the wisdom of such a policy. Has it anything to do with the appalling scale of current criminal statistics?

This report is not alone in using the word "client" for "probationer." One hopes the practice will rapidly cease. A moment's reflection is surely enough to reveal the absurd inappropriateness of the expression. Probation involves a personal relationship and draws its strength from the power of human influence. It is in no sense professional or commercial.

ASHTON UNDER LYNE PETTY SESSIONAL DIVISION

In his report for the year 1959, Mr. Albert Platt, clerk to the justices for the division, comments on the increased volume of work with some trenchant remarks on the current leniency in sentencing policy. He says, "for many years now the limelight has been on the man in the dock and the poor unfortunate people who have suffered by his crimes are very much in the background." He deplores this attitude and thinks that if it were changed, much good would result. He thinks the detention centre a very valuable institution, and comments very favourably on the work done in the local remand homes, though, apparently, these are inadequate in number.

It is interesting to have Mr. Platt's comments on the Maintenance Orders Act, 1958. He rightly points out the heavy additional work in the administration field which the Act entails. It is time that the authorities took into account the staffing of magistrates' courts in connexion with the framing and timing of such important pieces of legislation. Nobody minds the work, but it is becoming increasingly difficult, at current salary rates, to recruit and hold the type of staff required to perform it adequately.

LINDSEY COUNTY FINANCE, 1958–59

In his foreword to this booklet Alderman A. W. Harrison, chairman of the county finance committee, refers to the advantages of a concise summary of the council's financial transactions to the average councillor or ratepayer. Mr. John Jolly, F.I.M.T.A., Lindsey county treasurer, obviously had this point in mind and has prepared a most useful epitome. In a section headed "Costings and Statistics" he has given for each service just the sort of information which is required. It is disclosed, for example, that an average of eight hours a week is worked in each household receiving home help, that while the cost is 4*s.* 5*d.* an hour the maximum charge is 3*s.* 6*d.*, and that the average amount recovered is 8*d.* an hour.

The county council spent nearly £8 million in providing services for its population of 320,000 and employed 8,500 people to do the work. A rate of 14*s.* 3*d.* was levied to meet the third of this total falling upon the county ratepayers.

The number of vehicle licences issued by the motor taxation department continues to grow: 83,000 licences were issued during the year. Eighty thousand drivers' licences were issued, 28,000 less than

the previous year. This is an illustration of the saving of work which the introduction of the three year driving licence has effected.

Lindsey has a loan debt of £4¼ million, the loans pool rate of interest at March 31, 1959, being 4·7 *per cent.*

THE NATIONAL TRUST

The report of the National Trust for 1958–59 shows that the year was primarily one of consolidation as fewer properties were acquired than in recent years. Much was done, however, in improving and repairing existing properties, but more could be done if the Trust had greater means. During the year, the Trust received grants amounting to £53,000 from the Ministry of Works for the repair of particular buildings, and the income of the Trust from free legacies and donations was greater than in any previous year. The membership also increased and has risen in 14 years from 10,300 to 80,668.

The report contains a list of the historical buildings which were accepted during the year either from the Treasury under the National Land Fund Scheme or transferred to the Trust in lieu of death duties. There is also a list of open spaces accepted or acquired by the Trust.

The report of the Bowes Committee on Inland Waterways and the government proposals which followed its publication drew attention to the possibility that the Trust might take over and preserve canals of particular beauty or historic interest. The Trust is exceedingly anxious to help in this way and is negotiating with the Transport Commission for the acquisition of two canals, one near Stratford-on-Avon, the other a section of the Staffordshire and Worcestershire canal. The transfer of canals represents a new departure, both for the Trust and for the Transport Commission.

THE COUNCIL FOR THE PRESERVATION OF RURAL ENGLAND, LANCASHIRE BRANCH

This report, which covers the year September 1958 to August 1959, expresses particular concern about the proposed green belt around greater Manchester. The first formal moves towards the establishment of this belt were made in 1955, after the then Minister of Housing and Local Government had asked planning authorities to prepare a draft scheme, and since then it has been slowly taking definite form. The exact boundaries have now been approved by the county planning committee and the scheme awaits the final observations of the county district councils before submission to the Minister. In the meantime, at the Minister's express wish, development inconsistent with the green belt is being refused and many appeals against such refusal have been dismissed. While the report wholeheartedly welcomes these moves it asks how they can be related to the two super grid proposals now threatening vital sections of the county's green belt, one of which will, if approved, stand like an immense steel fence down the western flank of the Pennines, and the other run through "an oasis of rural beauty in the midst of industrial Lancashire"—owned by the National Trust.

Other matters dealt with in the report are river pollution, broiler houses, trees and woodland, redundant wartime camps and caravans. With regard to caravans it suggests that if they are to be prevented from spoiling the public view and if the enjoyment of caravan camping for holiday purposes is a legitimate one, it is only fair that caravans sites should not be opposed where the public view is unaffected and where they do not harm the interests of other people. The report also refers to the results of the Litter Act, which, together with the intensive litter campaign, it believes has resulted in a marked improvement in public behaviour.

The committee is to be commended for the admirable photographs included in the report which add considerable force to the comments made in the text, but we suggest that the inclusion of a map of the area with which the branch is concerned would have been useful.

FINANCES OF THE WEST RIDING OF YORKSHIRE

The return prepared by West Riding treasurer, B. Hazel, F.I.M.T.A., gives information about rates levied in 1959–60 and general statistics of the finances of the 89 county districts contained in the administrative county. Rateable values per head are highest in the non-county boroughs (Harrogate has a figure of £16 10*s.* 4*d.*) and lowest in the urban districts (Conisbrough at £6 2*s.* 2*d.* is smallest). In 1959–60 Harrogate's rate rose by 3*s.* to 18*s.* 4*d.* while Conisbrough's remained at 24*s.*

The estimated penny rate product of the county was £61,800.

A considerably larger number of authorities gain under the Local Government Act, 1958 than lose under it. The largest transitional receipt is that of Harrogate (£111,000), the largest payment Hemsworth rural district (£26,000).

A great many of these Yorkshire authorities continue to levy a rate for housing.

Over a quarter of all hereditaments are rated at £10 or less, and 60 *per cent.* of the total have rateable values of £18 or less.

Net loan debt of county council and county districts totals £154,000,000, but £126,000,000 of this total has been incurred for housing purposes. County council debt amounts to £17,000,000.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Williams on Title. Second edn. Supplement. By W. J. Williams. Butterworth & Co. (Publishers) Ltd. Price 7*s.* 6*d.*, combined price 95*s.*

REVIEWS

The Local Government Act, 1958. By Harold Parrish. London: Butterworth & Co. (Publishers) Ltd. Price 27s. 6d.

In our editorial columns we have taken note of some provisions of the Local Government Act, 1958, and made copious suggestions upon the manner in which it seems to us desirable that part II of that Act should be worked. The first three parts of the Act are logically distinct; part IV is supplementary and general. Although the Act is comparatively short many of its provisions are complicated and involve reference to other legislation. It will therefore be helpful to our readers to have a handbook which explains the provisions of the Act, upon lines made familiar in Messrs. Butterworth's *Annotated Legislation Service*. There is a short general introduction explaining the scope of the four parts of the Act, and these are then taken section by section. The notes on each section begin with a statement of its general effect, after which all doubtful points are briefly taken up, particularly from the point of view of cross-reference to other parts of the Act and to previous statutes. After the notes upon the Act itself, there is a convenient appendix of statutory instruments, of which there have been a good many in the 12 months which elapsed between Royal Assent and the production of the book. Altogether, the book at its modest price is one which will we hope be obtained, not merely by all local government authorities, but by all officials who are in any way concerned with the changes made by the Act of 1958.

Hire-Purchase Accounts and Finance. By H. Simpson Cook, J. Anderson Hermon and H. Pearse. London: Gee & Company (Publishers), Ltd. Price 27s. 6d.

Since the war there has been a phenomenal increase in hire purchase. A reviewer is not concerned with the question whether this has been a good thing for the country, but only to note the increase as a fact, which brings a number of new problems to the practising solicitor as well as to accountants and the money market. The book before us is another of the competent textbooks in which Messrs. Gee have specialized, upon subjects on the borderline of law and commerce. We have noticed several of these as they reached us because, even though Messrs. Gee are not primarily legal publishers, the subjects of the books have been such that our own readers will be wise to inform themselves about those subjects for the purpose of advising clients. The present work includes chapters on the law of hire purchase, which are sufficient to inform the accountant or the trader of the main points about which he ought to be aware, and to warn him when to consult his legal advisers. Incidentally we are glad to see, in the introduction to the present work, a warning against high pressure salesmanship and a suggestion that firms should penalize travellers whose customers default on payments—in other words, that it should be regarded as unsound business (apart from other objections) to encourage commitments beyond the householder's reasonable capacity. It is desirable that the lawyer, called upon to advise either the trader or the customer about hire purchase transactions, shall understand the best methods of accounting for these transactions, and that he shall be acquainted with the general system of finance for hire purchase, and its relation to taxation. He will find enough information for practical purposes on all these matters in the present book.

Parker's Election Agent and Returning Officer. By H. W. Wightwick and H. W. Wollaston. London: Charles Knight & Co., Ltd. Price £3 10s.

It is close on 75 years since Mr. Parker's book was published in its original form. It was based upon a memorandum prepared by

partners in a well known firm of solicitors and parliamentary agents, and issued originally by the Association of Municipal Corporations. The present is the sixth edition, and readers who are already familiar with the edition which appeared in 1949 will be glad to see that there has been no change of form. New law has of course been duly noted, but the changes in the statute law are slight. Persons concerned with the conduct of parliamentary elections who are not familiar with the book will find that logical arrangement of the subject matter is a strong point, beginning with the appointment of an election agent as required by statute in 1883, and continuing throughout all the processes which end with the declaration of the poll, and the numerous matters which have to be attended to afterwards in the way of settling accounts and charges. *Parker* has always been notable for detailed treatment of many small points which may confront the returning officer, presiding officers and others, and which need to be settled on the spur of the moment, and this feature is preserved. The book appeared just in time for the general election, but the passing of the election is not a reason for those who do not yet possess it to refrain from buying it now. There seems no reason to suppose that in the new Parliament there will be major changes in the law relating to parliamentary elections, and it can be confidently suggested that this new edition should be obtained for every office where, in the ordinary course, preparation will have to be made for the next general election and for by-elections to the House of Commons.

Introduction to English Law. By Philip S. James. London: Butterworth & Co. (Publishers) Ltd. Price 19s.

This is essentially a book for students; indeed the learned author suggests that it may be useful in the sixth forms of schools, and to persons who do not intend to follow the profession of the law. For example, the law of torts is dealt with comparatively lightly, although it is one of the main preoccupations of the practising lawyer. So also evidence and procedure are treated slightly, because these are not matters with which the beginner need concern himself.

The introductory part of the book covers both the nature of law and the English legal system. The second part deals with the constitution and with criminal law, with a chapter entitled "The Law of the Welfare State." This may seem unusual, but it is well worth separating the peculiar provisions which may be considered to fall under this heading from the treatment of other parts of the law. The 50 pages devoted to the law of the constitution give an admirable conspectus which the student should find extremely useful, before he goes on to study the specifically constitutional books.

Coming in part III to private law, the learned author devotes the remainder of the book to contract and property with (as already mentioned) comparatively slight treatment of the law of torts. There is a good deal about property and the law of succession, which seems to verge upon more advanced topics, but, by the time the student reaches this part of the book, he will at any rate have acquired a general idea of what law is all about. Within the limits which the learned author has set, and for the purposes which he has had in mind, this seems an admirable book which can be confidently recommended to teachers of law as one which they should bring to the notice of their pupils. It might advantageously be added also to every public library and to the libraries of senior schools.

SHORTER NOTICES

Notes on Benefits for Dependants

This pamphlet, issued by the information division of the Ministry of Pensions and National Insurance, and revised to July, 1959, explains the increases that may be paid to an insured person who is himself drawing benefit to assist him in supporting certain members of his family for whose maintenance he is mainly responsible.

Grimsby

This attractively produced official guide gives informative histories of both the borough itself and its fishing industry, as well as all information that could be needed by either visitors or residents. It is perhaps indicative of the considerable development in recent years of this borough, which received its charter in 1202, that so few of the businesses of which brief histories are provided, date back before the start of the century.

QUESTIONABLE

"O, my fortunes have corrupted honest men!" cries Shakespeare's Antony (*Antony and Cleopatra*, Act IV, Scene 5), and never was that saying more emphatically confirmed than during the recent investigation of the House of Representatives sub-committee, in Washington, on the so-called "rigged television quiz programmes." The first murmurs were heard in 1958, when a grand jury held a nine months investigation; early this October, when the House of Representatives had gained access to its report, and started afresh, a witness before its sub-committee, who had won nearly 50,000 dollars in a series of "quiz programmes" in 1956, described under oath how he had been given all the answers beforehand, instructed which questions he was to fail on, and rehearsed in his gestures and hesitations, even to the extent of biting his lip, mopping his brow and breathing heavily into the microphone. He had also, he said, been made to wear an ill-fitting suit and a frayed shirt, and to have had a haircut to give the impression that he was "a penniless G.I." The next witness was a lecturer in English at Columbia University who had sworn before the grand jury that he had had no knowledge of the questions or answers beforehand, and that his success in winning the enormous sum of 129,000 dollars was due merely to talent and a certain element of luck; but early in November this "competitor" admitted that he had been coached before each show and had consented to a preconcerted arrangement under which he was to "tie with" the former witness, who was represented as the "unbeatable champion." His revised testimony, which lays him open to charges of perjury, was described by a member of the sub-committee as a "most soul-searching confession," made (wrote *The Times* correspondent) "by a bewildered man caught up in something that he became powerless to stop—for he did try repeatedly to stop it, to leave the programme, or to have it run honestly; but his value as a celebrity was by that time so great that his final 'defeat' had to be carefully planned and built up."

This picture of an erstwhile honest man, corrupted and caught in the wheels of a relentless machine, may call for compassion; but one is less favourably impressed with his earlier self-justification by "the thought that he was promoting respect for education and things of the mind"—particularly when, as a result of his success in the "quiz programme," he was invited to talk in other programmes on serious literary or historical subjects to millions who would not otherwise have listened to such things.

Corruptio optimi pessima. A third witness, a clergyman from Tennessee, made similar disclosures about being given "practice questions" before appearing on television, where he won 16,000 dollars. He had had "doubts" about accepting the cheque, but eventually did so. He "wrote a letter of protest to the producer but received no answer." This reminds one of the lines in Lewis Carroll's poem, *The Walrus and the Carpenter*, when the Walrus addresses The Oysters he is about to eat:

> "I weep for you," the Walrus said,
> "I deeply sympathize!"
> With sobs and tears he sorted out
> Those of the largest size;
> Holding his pocket-handkerchief
> Before his streaming eyes.

One result of these unsavoury disclosures of the large-scale deception of millions of silly, credulous people, in the interests of financial profit to fraudulent promoters and sudden accretions of fortune to unscrupulous "competitors," has been an

announcement by the Columbia Broadcasting System of the withdrawal of all "quiz shows" on the ground of alleged "difficulty in policing, public or private, to plug up all the possibilities for hanky-panky" (*sic*) in the production. A second result has been a salutary warning, from the investigating sub-committee, of the prospect of Federal Government intervention unless the producers mend their ways.

Evidence from certain officials of two broadcasting systems, who chose to exhibit themselves in the white sheet of penitence, leaves the reader uneasily conscious of parallels with the public confession and self-abasement that have often accompanied trials for anti-social offences on the other side of the Iron Curtain. The promise to use (at this late stage) stringent precautions to keep "quiz programmes" honest, to ban "deceptive practices such as recorded laughter and applause," to restrain the displays of bad taste (or worse) which blacken so many of the television "commercials," carefully refrain from getting at the root of the problem, as a social critic like Mr. Charles Chaplin tried to do in his film *A King in New York*. Even a sententious leading article in *The Times*, touching upon the symptoms of the *malaise* which afflicts the American way of life, stops short of analysing those symptoms and diagnosing the disease, which is by no means confined to the United States, but is tending to the degeneration of western civilization as a whole.

"Corruption," as Edward Gibbon said, "is the most infallible symptom of constitutional liberty"; or, putting the same idea in Lord Acton's words, "All power tends to corrupt; absolute power corrupts absolutely." These are political rules to which history provides no exceptions. Mass-adulation and mass-hysteria over tenth-rate entertainment; the inculcation, by mass-suggestion, of the idea that honest hard work and devoted study are on the way out, that wisdom, learning and experience are of less importance than "snappy backchat" and witty rejoinder, that the practices of providence and frugality are old-fashioned and stupid, and that the gamblers and the "smart Alecs" hold the keys to the future, is a sign and a cause of inevitable decadence.

There have been many examples of fraud and deception in the worlds of religion, law, literature, art and science. The ancient oracles, despite their ambiguous double meanings, preserved their fame for centuries; the false prophets and self-styled Messiahs have their adherents today. The claimant to the Tichborne Estates, in 1871, brought more than a hundred witnesses to swear to his identity in a trial that lasted three months—and yet was convicted of perjury at last. James Macpherson, in 1760, published his so-called translation of fragments of the alleged Gaelic epic poem *Ossian;* controversy waxed hot and fierce, but it was shown to be a forgery in the end. The Dutch artist Van Meegeren, at the end of the second world war, was able to convince the experts and art critics of two continents of the authenticity of his "discovery" of a number of hitherto unknown paintings by Jan Vermeer—and subsequently proved beyond doubt that he had done them all himself. Eminent anthropologists were worked up into a state of intense excitement and enthusiasm, some years ago, by the discovery in southern England of the bones of "Piltdown Man"—which had been deposited where they were found, by a practical joker, a few months before.

All these are instances of fraud and deception, and reprehensible as such; but they touch only the fringes of credulity, among small sections of the public. It is the enormous power wielded by the organs of mass propaganda and mass suggestion—a power that can be measured by their wealth and their appeal to the millions—that bids fair to make such organs the Frankensteins of modern times—monsters that will allure, deceive, madden, and eventually destroy the social systems that gave them birth and tolerate their rank abuses.

A.L.P.

ADDITIONS TO COMMISSIONS

BANBURY BOROUGH

George Noyce Clark, The Mill House, North Newington, Banbury.
Arthur Edward Hendley, 22 Easington Road, Banbury.

BRIGHTON BOROUGH

Alan Jeffery Hodder, 2 Beechwood Avenue, Withdean.
Harold William King, 48 Chichester Drive West, Saltdean.
Mrs. Margaret Alice Jeannette Langford, 23 Norfolk Road, Brighton.
George Henry Parks, 24 Deacons Drive, Portslade.
Charles Royle, M.P., Shepherds Cottage, Bazehill Road, Rottingdean, Brighton, 7.
Alan Goodwin James Horton-Stephens, 275 Dyke Road, Hove, Sussex.

BRISTOL CITY

Mrs. Joan Lechmere Cheverton, The Garth, Station Road, Nailsea, Somerset.
Alfred Newton Gibbs, 86 Chandag Road, Keynsham, nr. Bristol.
Kenneth Blandford Lalonde, 23 Downleaze, Sneyd Park, Bristol, 9.
David Mainwaring Lambart Sladen, T.D., Yeomans, Wrington, nr. Bristol.
Lewis Yeates, 35 Abbey Road, Westbury-on-Trym, Bristol.

CAMBRIDGE CITY

John Bridge Tyrer, April Cottage, Fulbourn, Cambridge.

CHESTER CITY

Fred Barker, 12 Seller Street, Chester.
Miss Constance Maud Baxter, 33 Parkgate Road, Chester.
Miss Kathleen Edmondson, 30 Lime Grove, Hoole, Chester.
Major James Roy McGarva, Springfield, Vicar's Cross, nr. Chester.
James Davies Siddall, Crosswood, Guilden Sutton, Chester.

YORKSHIRE (WEST RIDING) COUNTY

Joe Brabbs, Tudworth Green Farm, Hatfield, Nr. Doncaster.
Leslie Clarke, 118 Moor Lane South, Ravenfield, Rotherham.
Andrew Guy Crowther, Field House, Slaithwaite, nr. Huddersfield.
Mrs. Kirsteen Simpson Elmhirst, Castle Hill, Laughton, nr. Sheffield.
Miss Jeanne Constance Mary Gilbey, Ackworth School, Pontefract Road, Ackworth.
Joseph Harper, 82 Leatham Crescent, Purston, Featherstone.
Francis Cade Gardon Harris, 164 Oldfield Road, Stannington, Sheffield.
Major John Musgrave Horsfall, M.C., T.D., Beanlands, Crosshills, nr. Keighley.
Mrs. Jessie Roberts Kirby, The Manor House, Wilshaw, Meltham, Huddersfield.
Major James Herbert Geoffrey Macalpine, Linton Croft, Waddington, Clitheroe.
Cyril Mason, Highfield House, The Common, Staincross, nr. Barnsley.
Percy Claude McWilliam, 8 Robertsgate, Lofthouse, nr. Wakefield.
Major Harold George Warde-Norbury, Hooton Pagnell Hall, Doncaster.
John Edward Oliver, 41 Haslemere Grove, Bentley Road, Doncaster.
Mrs. Alice Clonagh Priestley, Cheshams, Bentham, Lancaster.
Rex Proctor, Northgate Lane, Linton, Wetherby.
Douglass Robinson, The Lumb, Triangle, Halifax.
Anthony Sweeney, 9 Cross Lane, Stocksbridge, Sheffield.
Mrs. Annie Taylor, Old School House, Elslack, Skipton.
Walter Frederick Turner, Gordon Bank House, Midgley, nr. Halifax.
Mrs. Bertha May Ward, 31 Westfields, Cutsyke, Castleford.
Mrs. Ruth Lilian Wild, 31 Grange Terrace, Pudsey, nr. Leeds.
Mrs. Bridget Wildsmith, 127 West Street, Hoyland, Barnsley.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Animals—*Protection of Birds Act, 1954—Who can prosecute?*

Does s. 12 (4) of the Protection of Birds Act, 1954, restrict the institution of proceedings to county, county borough councils or local authorities or can the police or any other private person act as informant?

GIMON.

Answer.

In view of the terms of s. 12 (1) of the Act, which empowers a constable to arrest without a warrant in certain cases, we think that subs. (4) does not restrict the institution of proceedings to county councils, etc. In practice, many such prosecutions are brought by the R.S.P.C.A. (*see* the notes of various cases in 119 J.P.N., on pages indexed at p. 875).

2.—Criminal Law—*Conviction at quarter sessions—Sentence postponed and recognizance entered into—Subsequent fresh evidence—Bringing before court for judgment.*

A man appears at quarter sessions charged with house-breaking. He is convicted and bound over in his own recognizance in the sum of £10 for two years. Two weeks later at a magistrates' court he is convicted of larceny and is conditionally discharged. The chairman at quarter sessions directs that he should be brought before the court to be dealt with for the breach of his recognizance.

Will you please state:

(*a*) Whether or not a warrant, summons or notice can be issued to effect his appearance at quarter sessions and if so in what form.

(*b*) On his being dealt with at quarter sessions, can a sentence of imprisonment be imposed for the original offence of house-breaking and his recognizance discharged?

K. SPEAD.

Answer.

We are assuming that the recognizance was one to come up for judgment if called upon and, meantime, to be of good behaviour. The answers are:

(*a*) He should be given notice (there is no special form) to appear before the court at a stated time (*see R.* v. *David* (1939) 27 Cr. App. R. 50) and if he fails to do so a bench warrant can be issued to compel his appearance.

(*b*) Yes.

3.—Evidence—*Proof of statutory instrument—Objection to non-production overruled—Validity of subsequent conviction.*

My magistrates have recently dealt with a summons under the Motor Vehicles (Construction and Use) Regulations, 1955 (Nos. 73 (2) and 104), alleging the use of a vehicle on a road carrying an insecure load. After the close of the prosecutor's case, the defence submitted that there was no case to answer as the prosecution had not proved the statutory instrument, *i.e.* the regulation by the production of a Queen's Printer's Copy. The magistrates overruled this submission and imposed a fine of £5. I think it likely that an appeal will be lodged against this conviction. I have not heard of this point being taken before and wonder whether you have knowledge of any case. There is a reference in *Archbold*, 33rd edn., p. 342 to proof of statutory instrument and it would seem that the relevant statutory instrument should be produced.

MININ.

Answer.

It is essential that the statutory instrument be proved by production of a Queen's Printer's Copy, but in our view the magistrates, when the objection was taken, should have allowed the prosecution to reopen the case for the purpose of producing the necessary copy. In convicting without its production we think that the court were wrong. (*See Stone's* 1959 edn., p. 265, para. beginning "There is no rule of practice . . .")

4.—Housing Act, 1936—*Council's charge on property—Sale as mortgagees.*

Three years ago the council took action under s. 9 of the Housing Act, 1936, in respect of an insanitary house, and the necessary works were carried out in default. After completion of the works it was found that the owner had gone abroad leaving no forwarding address, but first having withdrawn his agency instructions from the firm of surveyors on whom the s. 9 notice had been served, as persons having control. A formal demand under s. 10 was served on the tenant of the property, and he was told that it was only necessary for him to pay to the council the rent which he had previously paid to the surveyors. This rent has been paid without fail. An order for instalments has not been made, particularly as the amount of the rent at present payable is such that the debt will not be cleared within 30 years. The charge on the property is registered in the register of local land charges. The question now arises, what action can be taken to speed clearance of the outstanding charge. Are the council mortgagees in possession, and therefore able to raise the rent of the property, or do you consider that any other useful action can be taken?

PIRNAB.

Answer.

By virtue of s. 10 (6) of the Act of 1936, now re-enacted as s. 10 (7) of the Housing Act, 1957, the council can use the powers of the Law of Property Act, 1925, ss. 101, *et seq.*, to sell the property out of court.

5.—Licensing—*Intoxicating liquor supplied out of permitted hours—Unknown consumer.*

During observations on a registered club drinks were seen to be served over the bar counter by the club secretary after permitted hours, three separate supplies being made at intervals of one minute. The officers concerned are not in a position to prove to whom the supplies were made but can say what the drinks were and, by a process of elimination, to which party they went.

I should not like to rely on the process of elimination, and am writing to ask if you agree that in the circumstances it would be proper to prefer three separate charges against the club secretary for supplying intoxicating liquor except during permitted hours to "some person or persons unknown."

The form in *Oke* requires the name of the person to whom supply was made to be shown in a charge under s. 100 of the Licensing Act, 1953.

OLGOL.

Answer.

There may be a conviction for an offence under s. 100 of the Licensing Act, 1953, although the information does not state, and

the prosecution does not prove, that the liquor was supplied to a person identified by name.

If this information is known it is desirable that it should be stated in order that the defendant may have the best particulars of the charge alleged against him, and it was with this in mind that Form No. 11 on p. 457 of *Oke* was drafted.

6.—Public Health Act, 1936—*Premises in such a state as to be prejudicial to health or a nuisance.*

The magistrates' court have refused to grant an application by my council for a "nuisance order," in respect of a defective ceiling in the scullery of a house, on the ground that the defect is too trivial to constitute a nuisance. No appeal on a point of law or otherwise is possible in view of the lapse of time, but the council feel that the condition of the ceiling warrants further action. Unless there is some fresh evidence, it seems that further proceedings under the Public Health Act, 1936, might be met with the plea of *res judicata*.

Your opinion is requested as to whether:

(*a*) as a fresh abatement notice would have to be served, it could be argued that there is a new cause of action, the basis of which is failure to comply with a notice, although the other facts are the same as previously;

(*b*) if no action can be taken (*a*) the council may be faced with the same plea of *res judicata*, should they decide to proceed under s. 9 of the Housing Act, 1957.

My own view is that (*b*) is the proper course to take, and that there would be a completely new cause of action, should the owner decide to appeal to the county court, and that although the dismissal of the case in the magistrates' court might be used in evidence by the other side, the notice could not be quashed on this ground. Do you agree please?

PERUXA.

Answer.

(*a*) A new notice under the same section can be served if the ceiling has become more dangerous, when the argument will be that the defect is no longer "trivial."

(*b*) We agree that it will be wiser to take fresh proceedings under s. 9 of the Housing Act, 1957, which will be different from those previously taken. The court might, however, be reluctant to uphold the council unless there was further evidence of danger or other evidence of unfitness.

7.—Public Health Act, 1936, s. 14—*Sewerage—Camps—Caravans and holiday chalets.*

Does the council's duty under s. 14 of the Public Health Act, 1936, extend to the provision of sewers to serve camping areas: (*a*) solely such, and (*b*) where a small number of houses are dispersed irregularly in the camping area, where there are also caravans and chalets.

CAMPER.

Answer.

The council's duty is to provide whatever sewers are necessary; the question what is necessary will in case of dispute be for the Minister's decision under s. 322 of the Act. If part of the district was likely to be used more or less permanently for camps it could hardly be argued that the council's duty did not extend to that part of the district, whether the camps were or were not interspersed with scattered houses. The question, as we see it, is not the nature of the premises where foul matter is produced but rather the quantity of such matter, and the extent to which it can be disposed of otherwise without danger to public health.

8.—Road Traffic Acts—*Aiding and abetting—Unlicensed driver—Passenger who knows that the driver has no licence.*

I should be glad of your opinion on the following. A is riding his solo motor cycle without a driving licence and is carrying B as pillion passenger. When questioned B admits to knowing that A has no driving licence, and is reported for aiding and abetting the offence by A.

There is no evidence that A was induced by B to commit the offence of driving without a licence, or indeed any evidence at all of a more active participation by B in the commission of the offence by A than the riding as pillion passenger.

Opinion here is divided as to whether an offence by B is disclosed in these circumstances. My own opinion is that his own admission is not of itself sufficient, and that there should be some evidence of actual participation in the offence of A. Do you agree? If so, do you also agree that, in general terms, these offences require the degree of proof as outlined above?

MORALA.

Answer.

We agree that if there is no evidence to show that B acted in some way which led, or contributed, to the journey made by A, his presence as a passenger in the course of a journey which A would have made in any event does not make B guilty of aiding and abetting A in the commission of his offence.

The onus is on the prosecution to produce evidence to establish a *primâ facie* case that B, by his conduct, contributed in some way to the commission of the offence.

9.—Road Traffic Acts—*Failure to stop after accident and no report to police—Two offences.*

It has now been established in *North* v. *Gerrish* (1959) 123 J.P. 313 that s. 22 (1) creates only one offence. I am, however, in some doubt as to whether a driver may commit an offence under s. 22 (1) and s. 22 (2) arising out of the same set of facts. Section 22 (1) lays down the obligation that the driver of a vehicle involved in an accident must:

(*a*) Stop; and

(*b*) Give his name and address, etc.

Whilst s. 22 (2) lays down—"If in the case of any such accident as aforesaid the driver of the motor vehicle for any reason does not give his name and address he shall report the accident at a police station . . . within 24 hours . . ." It seems to me that obligation in s. 22 (2) is in some measure alternative to that contained in s. 22 (1).

1. If, therefore, the driver stops after an accident, but does not give his name and address, etc., or subsequently report to the police, does he commit an offence under s. 22 (1) or s. 22 (2) or both?

2. Again, if a driver stops, but refuses to give his name and address (which refusal cannot apparently be cured by a subsequent report to the police: *Dawson* v. *Winter*) and does not subsequently report to the police, he appears to commit an offence under s. 22 (1) but does, he also commit an offence under s. 22 (2)?

3. Thirdly, does a person who fails to stop after an accident or give his name and address, etc., or report to the police, commit an offence under s. 22 (1) only, or does he also commit an offence under s. 22 (2) as well?

LION.

Answer.

Section 22 (1) and s. 22 (2) create separate and independent offences, and the answer to the questions are:

1. Having stopped he does not commit an offence against s. 22 (1) unless someone requires him to give the necessary particulars and he does not do so; but, not having given his name and address, he does commit an offence against s. 22 (2) by failing to report to the police.

2. and 3. Here he commits, in each case, two offences, one against each of the subsections.

10.—Shops—*Sunday opening of motor showroom—Shops Act*, 1950, *s.* 47.

An opinion is sought upon the interpretation of s. 47 of the Shops Act, 1950, and sch. 5 to the Act, with regard to the opening of showrooms by a garage for the purpose of exhibiting and allowing persons to inspect cars in the presence of an employee.

The sale of petrol, oil and accessories appears to be permissible, but if such facilities are not available on a Sunday, the recent case of *Betta Cars Limited* v. *Ilford Corporation* appears to decide, even if sales are not effected, the opening of the garage for the purposes of exhibition and inspection is in contravention of the Act, and distinguishes the case of *Waterman* v. *Wallasey Corporation* (1954) 118 J.P. 287; [1954] 2 All E.R. 187.

The question has arisen as to the extent to which motor salesmen may keep open their showrooms on Sunday.

1. Where facilities are available for the supply of petrol, oil and accessories.

2. No facilities are available for supplying or servicing customers.

Your opinion in these matters would be appreciated.

HACKLE.

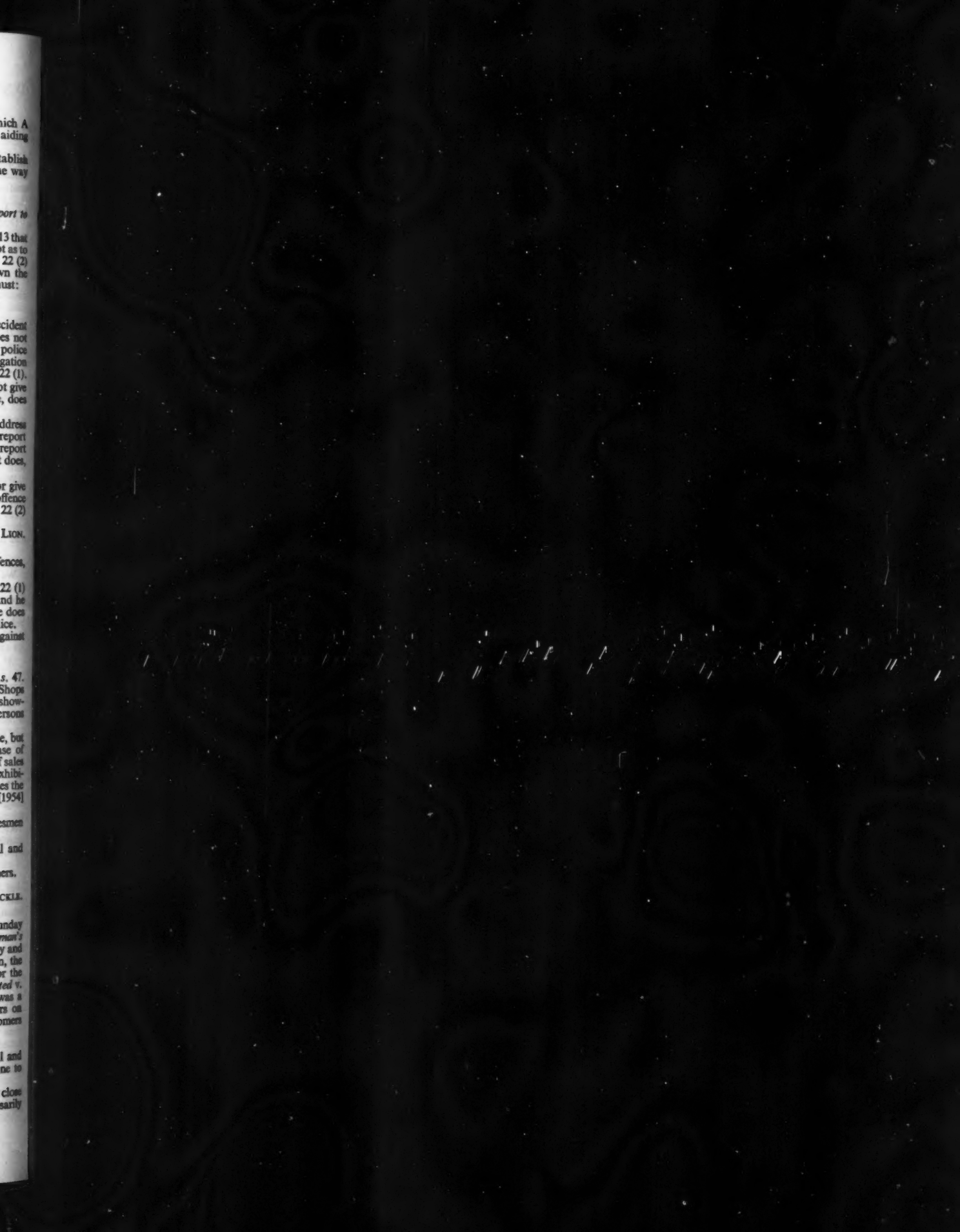
Answer.

The sale of motor supplies or accessories is permissible on a Sunday since they are transactions mentioned in sch. 5 to the Act. *Waterman's* case decided that if a garage were open for such sales on a Sunday and customers inspected cars on show without the help of a salesman, the proprietors could not be said to be keeping the garage open for the service of customers in respect of the cars. In *Betta Cars Limited* v. *Ilford Corporation* there was no sale of accessories and there was a salesman present to answer customers' questions about the cars on display. The garage was held to be open for the service of customers even though no sales took place.

The position would appear to be:

1. Where facilities are available for the supply of petrol, oil and accessories, cars may remain on display provided nothing is done to further their sale.

2. Where no such facilities are available, it would be safer to close the showroom, since the mere fact of its being open would necessarily imply the presence of a salesman.



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